1947. File No. O Munis Bom City/47

Legal Department

A BRANCH

Subject:—

Opinions under the City of Bombay Municipal Act 1888

EL 1-13

File No. Munis O: Bom City/47

Gen. 194

87-A

K

C O N T E N T S.

Legal Department File No.O.Munis.Dom.City/1947.

Sr.No.	O.I./O.No.	Subject.	Pages.
		Opinions under the City of Bombay Municipal Act.1888.	
1-	890/10-1-47.	Section 110-A Question whether the view expressed by the Municipal Comnt. that payment of contribution of Rs.1120,000/ - demanded by Govt. is ultra vires provisions of the Act.	1-2
2.	1504/5.2.47.	Question whether till the general elections are held, for the purposes of bye-elections for filling casual vacancies the existing vote can be deemed to have been continued or whether legislation is necessary.	3-5
3.	1869/7-2-47.	Questions (1) What is the meaning of the expression "temporary purpose" occuring in sub-sec.(3) of sec.91A of the Act. and (2) Whether the lease of land granted to the N.I.M. being in contravention of the provisions of Sec.91A (3) of the Act, is void.	5-6
4.	1589/15-2-47.	Sec.80B(3) Question whether it is necessary to frame rules to continue the services of Mr.Dhamak.	7-10
5.	2812/2-3-47.	Question whether there is any legal objection to the Municipality paying the amount of Rs.1,20,000 as part of compensation, to be determined for the acquisition of the Kardi Village land.	11-14
6.	2344/10-3-47.	Question regarding acquisition of the Village site of Khardi as the Bombay Municipality writes to have the village out of the cantonment area in the interest of the party of the Tansa Water Supply;	15-16
7.	3222/2-4-47.	Sec.394(1)(d)(i)r/w Sec.479. Question whether a condition in the licence can be inserted that on no account the cabing house circumvent any of the provisions of the Excise Act of the prohibition Policy of Govt.	17-18
8.	5333/26-5-47.	Sec.194- Question whether the foodgrain handled by the C.S.C. at the time of importation into the city of Bombay can be brought with-in the ambit of--	19-20
9.	5316/23-5-47.	Questions (1)whether it would be legally necessary to obtain the Municipality's concurrence to amendment of the Act to enable the club House to stand.	

1946

(2)Whether in view of the fact that the base is void Govt. could ask the N.I.H. Authorities to remove it and whether they are bound to comply with any such ~~xxxx~~ direction from Govt.(3) Whether Govt. would be liable to pay compensation if the club House were to the removed (4) If so, whether the compensation payable would be the full value of the structure,(5)-Whether amendment of the Act can be undertaken but a view to achieving the object of permitting the Club House to remain for a given number of years and providing for its removal thereafter, and (6) If so, whether such a course would involve Govt. Govt. in a claim for compensation. 21-22

10. 6819/30-6-47. Questions (1) Whether Govt. is liable to pay the municipal taxes even though Govt. is not now the occupier of the premises if so (2) whether Govt. should pay the taxes with on without notice to the owners. 23-24

BVN.13/6/

Office of the R.L.A.

The view taken by the Municipal Commissioner in his letter at page 73 ante is correct. It is true that the payment of the contribution by the Municipality may facilitate the acquisition of lands of the villagers of Khandi and there may be also a more liability on the Municipality to provide water facilities to them when Municipality desires to acquire their lands for its water-works; but the Municipality is a corporation bound by the provisions of the City of Bombay Municipal Act, 1888, and such expenditure being not permissible under section 118-A it would not be competent for the Municipality to make the contribution.

Sd/

Remembrancer of Legal Affairs.

U.R. to G.D.No.290, dated the 10th January 1947.

EKM.13/6/

Office of the R.L.A.

Section 19 of the City of Bombay Municipal Act, 1888 (Bom.III of 1888) prescribes the manner in which a list of persons entitled to be en-rolled in the election roll shall be prepared. Under sub-section (1) of section 21 when the list is corrected and signed by the Commissioner it shall be the Municipal Election roll Under sub-section (5) of section 21 in case a municipal election roll is not made in due time, the municipal election roll in ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ operation immediately before the time appointed for its preparation shall continue in operation until the said roll is made. It would appear from these provisions that the election roll ~~and~~ at present in operation is the valid roll under which the by-elections can now be held.

It is true that by the amendments made by Bombay Act I of 1946, the City has been divided into 34 wards instead of 19 as before. But the present Corporation was elected by the 19 wards and a casual vacancy occurring will have to be filled up by election by the particular ward concerned. If the present division of the City is taken into consideration it will not bepossible to hold any by-elections at all. This would result in an absurdity. The new division can only be given effect to in the first instance for purposes of holding a general election which has been post-poned to 1948, after preparing a new roll and thereafter for holding by-elections on that roll. It will thus appear that it is notnecessary to make any further provision by amendment either of the City of Bombay Municipal Act, 1888 or the City of Bombay Municipal Corporation(Extension of Term)Act,1941, as proposed.

Sd/
Remembrancer of Legal Affairs.

EKK.13/6/ U.H. to G.D.No.1204 dated the 5th February 1947.

Office of the R.L.A.

Under sub-section (3) of section 91-A of the City of Bombay Municipal Act,1888 Plot.No.3 the Cooperage Plot vests absolutely in His Majesty subject to the conditions (i) that it shall be maintained in perpetuity as an open space mix and (ii) that the Plot or any part ther fof may at any time be occupied by or with the previous permission of the Provincial Governmentforany temporary purpose. "Temporary" means "lasting for a time only; existing or continuing for a limited time; not of long duration not permanent; transitory; lasting for a short time" (See Iyer's Law Lexicon, page 1266). The grant of 6875 square yards of the Cooperage Plot to the Royal Indian Navy on a lease for 60 years for the construction of a club house for ratings of the Royal Indian Navy cannot by any stretch of imagination be considereed occupation for a temporary purpose within the meaning of sub-section (3) of section 91-A.

Under section 23 read with section 10 of the Indian Contract Act an agreement is void if the consideration or object ther of is forbiddem by law or is of such a nature that, if permitted, it would defeat theprivisions of any law. The lease of the land inthe present case not being for a temporary purpose is forbidden by sub-section (3) of section 91.A of the City of Bombay Municipal Act and if permitted would defeat the provisions ther eof. Consequently thelease is void. The view taken by H.M.(R) is correct.

Sd/

Remembrancer of Legal Affairs.

U.R. to R.D.No. 1269 dated the 7th February 1947.

EKN.25/6/

L.D.R.I.No.381 dated 13-1-47.

Mr.Dhanak was appointed by the Municipal Commissioner under section 80A of the City of Bombay Municipal Act,1888, for a period of six months ending on 11th September 1946. It is now considered necessary to continue him beyond that period upto 31st March 1947. The Corporation thought that to continue the services of Mr.Dhanak it will have to frame a rule under section 80B (3) and accordingly it framed a rule and submitted it for approval of Govt. Govt; however, considers that Mr.Dhanak's appointment having been made under section 80A(1) by the Commr. and being continuable with the sanction of corporation beyond the period of six months under the proviso to section 80A(1), provisions of section 80B are not attracted by his case and consequently it is not necessary for the Corporation to frame any rule under section 80B.(3). In its letter at p.15 ante, Govt. is going to inform the Corporation accordingly.

BKN:13/6/

Office of the R.L.A.

Seen and returned.

The view taken by General Department is correct.

Sd/

Remembrancer of Legal Affairs.

U.R.to G.D.,No-1589, dated the 15th February 1947.

EKM.13/6/

Office of the R.L.A.

The previous opinions of the R.L.A. No.290 dated, 10th January 1947, and No.2344, dated 10th March 1947 were given on the basis that the question for consideration was whether the Bombay Municipal Corporation could incur an expenditure of Rs.1,20,000 under section 118-A of the City of Bombay Municipal Act, 1888, by way of a grant to make water provision for the villagers of Khardi at the new site. A fresh approach to the question has now been made, and the matter has been very carefully considered. There is no legal objection to the Municipality paying the aforesaid mount as part of compensation to be determined for the acquisition of the Khardi village land.

2. There is a provision in section 2(5) of the English land Acquisition Act, 1919, which lays down that the compensation may be assessed on the basis of the reasonable cost of equivalent reinstatement in some other place is intended bona fide. Reinstatement means the cost of placing the claimant in the same position or in an equally advantageous position to that occupied previously, that is; at the time of dispossession by the acuqiring authority. It is true that in the Indian Land Acquisition Act there is no provision corresponding to section 2(5) of the English Land Acquisition Act, 1919- Nevertheless the principle of reinstatement has been recognised by the Courts in India (for instance see decision in 49 Cal.83 which is a case of Baroda Prasad Dey, Chairman Seramput Municipality v.Secretary of State). In the above cited authority, the principle of reinstatement was taken into consideration.

3.....

3. The Bombay Municipality is bound to pay compensation for the acquisition of the Khardi village land for its own water works. This acquisition compels villagers settled on the original land to shift elsewhere. The new site which has been proposed for them has no facilities for water. Water is an elementary need of human existence, and it is wholly inequitable to expect the villagers to shift elsewhere, where there is absolutely no convenience for water. The site under acquisition for the Municipality has water facilities. In these circumstances, in determining the amount of compensation for acquisition payable by the Municipality, there appears no legal objection to applying the principle of reinstatement. Compemsaction can be lawfully assessed on the basis of the reasonable cost of equivalent reinstatement, namely, the cost of water provision at the new site so as to put the villagers, after shifting to the new site, in an equally advantageous position as before.

4. It would be competent to the Municipality to pay in advance as part of the compensation an amount of Rs.1,20,000 to provide for water supply to the villagers and at the new site. The villagers cannot be compelled to shift to the new place without water facilities. It is also in the interest of the Municipality that the acquisition proceedings should be expedited to prevent contamination of the Tansa lake. Immediate payment of a part of the amount of compensation is one of the steps towards expediting. Accordingly there is no objection to ask the Municipality to pay in advance Rs.1, 20,000 as part of the compensation to be paid by it for the acquisition of the Khardi village land.

5. It will be quite legal for Government to proceed to denotify the village site if the Municipality is not willing to pay the abovesaid amount of Rs.1,20,000 as

part of the compensation to provide water facilities to the villagers before they actually shift to the new site.

Sd/

Remembrancer of Legal Affairs.

EMN.13/6/ U.O. to R.D., No.3218, dated the 2nd April 1947.

Office of the R.L.A.

This relates to theproceedings for the acquisition of the village site of Khardi as the Bombay Municipality wishes to move the village out of thecatchment area in the interest of the purity of the Tansa water supply. The villagers are not inclined to move to a new site unless propoer amentities, principally water supply are provided for them. The estimated cost for this purpose is about Rs., 2 lacs. Out of this amount Govennment proposed that the Bombay Municipality should contribute a sum of Rs.1,20,000. In his letter dated 17th September 1946 at page 73 the Municipal Commissioner stated that the payment of such contribution, not being for any of the purposes of the City of Bombay Municipal Act,1888, would be ultra vires the provisions of section 118A. The view taken by Municipal Commissioner has been confirmed by the R.L.A. in his opinion dated 10th January 1947 at page 79. For the reasons given in his note at pages 83-84, Secretary Revenue Department has requested the R.L.A. to reconsider his opinion.

It is true that the settlement of the question of providing adequate water supply to the villagers at the new site is closely bound up with the whole acquisition proceedings in this case. But it would not bepossible to refuse to acquire the lands merely on the ground that the question has not been settled. The notification under section 4 of the Land Acquisition Act, 1894 has already been issued. If Government is satisfied that the lands are needed for a public purpose it cannot be made a condition precedent to the issue of the notification under section 6 that the question of water supply at the new site should be settled first.

Section 23(1) (fifth para.) of the Land Acquisition Act lays down, inter alia, that in determining the amount of compensation the court shall take into consideration, if the person interested is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

Section 24 (second para.), however, lays down that the Court shall not take into consideration any disinclination of the person interested to part with theland acquired. The only effect of section 23 is that the Municipality can be asked to pay the compensation to the villagers at a higher rate. But this is not relevant for deciding the question at issue i.e. whether the Municipality can beasked to pay contribution for providing water supply at the new site. Similarly there is no doubt that the Municipality can be asked to pay compensation to the District Local Board for the wells provided by the Board. But the compensation cannot be assessed at the expenditure necessary to provide a similar facility for water at the new site.

For thepurposes of section 118A of the City Municipal Act, the relevant point is that the expenditure must be for the pprposes of the Act. Even if a resolution is passed by fifty-four or more councillors the expenditure would not be legal if it is not covered by any of the provisions of the Act. Under section 87: the corporation can acquire immoveable property outside the limits of the City. Under section 91(2) the Commissioner is authorised to pay the amountof compensation for any land acquired on behalf of thecorporation. Under section 118(e) the municipal fund can be applied by the Commissioner for payment of compensation. As in the case of compensation there is no authority under the Act under which the Municipality can be asked to make the contribution as desired by Government. The R.L.A. adheres to the view taken by him in his opinion dated the 10th Jaunary 1947.

Sd/-

Remembrancer of Legal Affairs.

U.O.R. to R.D.No.3344, dated the 10th March 1947. EKN.13/6/

Office of the R.L.A.-

The view taken in paragraph 3 of the D.S.R.D's note, at pp.22-23 ante is correct. After condition (19) in the form of licence to keep an eating house at p.11 ante, the following condition may be inserted:-

"(19A) The licensee shall not keep or supply or offer to supply liquor or intoxicating drug, either separately or with or in any other food or beverage, for consumption on or off the premises or permit liquor or intoxicating drug to be consumed on the premises or in any way permit drunkenness or other disorderly behaviour thereon, in contravention of the provisions of the Bombay Abkari Act, 1878 or the City of Bombay Police Act, 1902 or any other law for the time being in force."

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.D.,No.3222, dated the 2nd April 1947.

EKH.13/6/

Office of the H.L.A.

To claim exemption from town-duty under section 194(1) of the City of Bombay Municipal Act,1888 all that is necessary is that the article at the time of its importation is certified by an officer empowered by Government in this behalf to be the property of the Crown. It is presumed that the food-grains handled by the Civil Supplies Department are, at the time of their importation, the property of Government. If so, on a certificate being issued to that effect by the officer empowered by Government in this behalf exemption from town-duty can be claimed by Government under section 194(1).

Sd. P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to O.S.D.,No.8383 dated the 26th May 1947.

EKN.13/6/

Office of the R.L.A.

Section 65 of the Indian Contract Act provides that when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contrac is bound to restore it or to make compensation for it to the person from whom he received. The person who has transferred property to another for an illegal purpose can recover it back from the transfe under this section as both the transferor and transferee are in pari delicto (see Mulla's Contract). The lease in being void, it would be competent for Government to recover possession of the land from the R.I.N. Authorities without being liable to pay any compensation for the Club House structure there as both Government and the R.I.N. Authorities are equally at fault and as presumably no benefit has been received by Government.

If Government desires to allow the Club House to remain, it would be necessary to pass an Act validating the lease. No concurrence of the Municipal for passing such act would be required but the Corporation might be informally consulted, as the section was enacted after previous consultation with them.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to C.S., No.5315 dated the 23rd May 1947

BKN.13/6/

Office of the R.L.A.

It appears that the two portions of a godown of Messrs. Manekalal Mansukhbhai and Co. requisitioned by Government in 1943 were derequisitioned with effect from 31-81946, and restored th the owner. As the owner failed to pay the Municipal taxes due from 1-10-1945 to 31-3-1947 the Municipality is demanding those taxes from Govem ment as occupier under section 209 of the City of Bombay Municipal Act, 1888. The Compensation payable to the owner is not yet finally fixed. The questions r aised for the consideration of the R.L.A. are:-

(1) Whether Government is liable to pay the municipal taxes even though Governmentis not now the occupier of the premises;if so,

(2) Whether Government shouldkx pay the t axes with of without notice to the owner.

Under sub-section (1) of section 209 of the City of Bombay Municipal Act, 1888, the occupier would be liable for payment of the property taxes if the person primarily liable to pay has defaulted. -"Occupier" means a per son having the actual use or occupation (see Iyer's Law Lexicon page 898). The section itself uses the expression "the occupier for the time being" in distinguishing the person primarily liable. Under sectin 203 (1) if the defaulter be the occupier of any premises in respect of which a property tax is due, the sum may belevidd by distres and sale of any goods and chattels founds on the said premises. This provision also contemplates that the occupier to beliable for payment of the municipal taxes must be in actual possession of the premises. Governmen not being in actual occupation of the premises, would not be liable to pay the municipal taxes under section 209(1). Since Government is not s rictly occupier it is doubtful whether in case Government makes the paymentkkx it will be entitled to credit therefore in account with the person primarily liable. If,however, the owner specifically assents to give credit in the account of compensation which is yet to be paid, there should be no practical objection to

Government's paying the Municipal taxes.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to F.C's office,No.8819 dated the 30th August 1947.

EKN.13/6/